In order for the petitioner to succeed there must be acceptable evidence. Thus in *Thia Whee Kiang* v. *Kueh Eng Seng* [2] in the Court of Appeal, Williams C.J. said:—

"In granting a decree of dissolution of marriage in this case the learned trial Judge stated: 'There is no possibility of a reconciliation and that to my mind is enough for a dissolution.' That may have been a common-sense view but, with respect, I do not think that it was a proper conclusion to reach in the circumstances of this case."

After summarising the facts he continued at page 76 in these words:—

"It would appear that the learned Judge was of the opinion that, because the husband did not want his wife back and because the wife stated that she did not want to return to her husband, this was in effect a prayer for divorce by mutual consent. Such a divorce is in conformity with Chinese custom but here the wife stated categorically that she did want to be divorced. Her case was that the husband had made life so unbearable for her that she could no longer live with him. In my opinion, a married woman should not be deprived of her status as a wife except on good grounds supported by acceptable evidence."

In this case the petitioner has not satisfied me that there was any reason for her to refuse to live with respondent and that he was in no position to maintain her within the limit of his means. Also there was no evidence to show that they were in anyway incompatible. I am not prepared to deprive the respondent of his status as petitioner has failed to satisfy me that she is entitled to divorce on good grounds supported by acceptable evidence.

For reasons given I would dismiss the petition.

It may well be that respondent himself has good grounds for a divorce but he does not want a divorce. He has not cross-petitioned. They are still young. They must realise that in marriage there must be give and take. They should seriously consider a reconciliation to save the marriage. Perhaps influential members of their families or community will be able to help bring about a reconciliation. I make no order as to costs.

Petition dismissed.

PUBLIC PROSECUTOR v. BASAR

[A.Cr.J. (Gill J.) October 28, 1964]

[Ipoh — Criminal Appeal No. 66 of 1964]

Evidence — Identification of accused — Accused known to complainant — Recognition by flashes of lightening — Evidence not contradicted — Duty of magistrate.

Penal Code, s. 354 — Using criminal force — Intention to outrage modesty.

This was an appeal by the Public Prosecutor against the acquittal of the respondent at the end of the prosecution case on a charge of using criminal force on the complainant with the intention of outraging her modesty, an offence punishable under section 354 of the Penal Code. The complainant, who had known the respondent for some time had recognised his face by the flashes of lightning when the alleged offence was committed. Notwithstanding all the evidence for the prosecution, which was not contradicted by other evidence and remained unshaken by cross-examination, the magistrate acquitted the respondent on the ground that the complainant's evidence could not be relied on in so far as identification alone was concerned.

Held: in this case there was nothing inherently improbable about the complainant's story, and her evidence was neither contradicted by other evidence nor shaken by cross-examination. In the circumstances it was the duty of the magistrate to have called on the defence.

Case referred to:—

(1) *Public Prosecutor* v. *Mohamed Ali* [1962] M.L.J. 257, 258.

MAGISTRATE'S CRIMINAL APPEAL.

Abdul Daim bin Haji Mohd. Zainuddin (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Gill J.: This was an appeal by the Public Prosecutor against a decision of the magistrate, Teluk Anson, acquitting the respondent at the end of the case for the prosecution on a charge of using criminal force on one Siti Hafsah binti Haji Ilias with the intention of outraging her modesty, thereby committing an offence punishable under section 354 of the Penal Code.

The evidence of Siti Hafsah (P.W.1) was that on the evening of the 17th September 1963 at about 8 p.m. she went in a group to a fair at Sungei Sumun School about half a mile away from her house. She left the fair alone at about 11 p.m., with the other members of the group following behind her at a distance of about a quarter of a mile. As she was walking along a kampong path a person ran towards her from behind, embraced her and pulled her into a bush. She recognised this person as the respondent. She fell down when the respondent pushed her into the bush and he placed his hand on her mouth and told her not to make noise. She struggled and shouted for help, and a few minutes later, by which time the respondent had run away, Rohani binti Alias and Iswan bin Takrib came up to her. She told them what had happened and they sent her home. Her Malay baju was torn at the right shoulder during the struggle.

It was clear from the evidence that the complainant had known the respondent before that night and the scene was about 10 chains from the respondent's house. In answer to questions put to her by the court she said that she saw the accused with the help of two or three flashes of lightning. She went on to say that she was absolutely certain that it was the respondent who

held her. She did not complain to her parents because she was afraid she might be scolded but on the following day in the afternoon she complained to her brother-in-law named Harun and then on 19th September, 1963 made a police report.

Iswan (P.W.2) gave evidence to say that upon hearing a female voice crying for help he went towards the direction of the voice, together with Rohani, and saw the shadow of a person running away from the bushes. He then saw P.W.1 crying beside the road near some bushes and P.W.1 said that Basar had embraced her. Rohani (P.W.3) testified that when she was at her house she heard a female voice crying for help, and she went to the place from where the voice came, together with P.W.2. She saw P.W.1 standing near some bushes, crying and shivering. She asked P.W.1 what had happened and P.W.1 said that she was disturbed by Basar who had run away into the bushes. Harun (P.W.4) stated on oath that on 18th September, 1963 at about 5.30 p.m. P.W.1 informed him that on the night of 17th September, 1963 at about 11 p.m. she was held by one youth named Basar.

Notwithstanding all the evidence for the prosecution, which was not contradicted by other evidence and remained unshaken by cross-examination, the learned magistrate acquitted the respondent at the end of the case for the prosecution, his ground for such acquittal being that P.W.1's evidence could not be relied on in so far as identification alone was concerned. He stated in his grounds of judgment that a court should scrutinise very carefully any evidence relating to the identification of an accused person. I had no reason to quarrel with his general statement on that point but what he, in my opinion, failed to appreciate was that there was positive evidence about the identity of the respondent by P.W.1 who admittedly had known him for some time and had seen his face by the flashes of lightning.

There was nothing inherently improbable about the complainant's story and, as I have stated above, her evidence was neither contradicted by other evidence nor shaken by cross-examination. In the circumstances it was the duty of the learned magistrate to have called on the defence. In this connection magistrates will do well to bear in mind the following words, with which I respectfully agree, of Thomson C.J. (as he then was) in *Public Prosecutor* v. *Mohamed Ali* [1]:

"When a police witness says something that is not inherently improbable his evidence must in the first instance be accepted. If he says he saw a cow jumping over the moon his evidence is, of course, not to be accepted, but if he says he saw a cow wandering along one of the main streets of Kuala Lumpur (the sort of thing we all see every day of our lives) there is not the slightest justification for refusing to believe him. Of course if his evidence is contradicted by other evidence or is shaken by cross-examination then it becomes the business of the magistrate to decide whether or not it should be accepted. In the absence of contradiction, however, and in the absence of any element of inherent probability the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted."

I need hardly add that if upon the defence being called the respondent had offered an explanation which the learned magistrate considered to be reasonably true and which raised a reasonable doubt as to the truth of the prosecution case it would have been open to him to give the respondent the benefit of that doubt and to acquit him.

For the reasons I have stated I set aside the order of the learned magistrate and made an order for a retrial of the case before another magistrate.

Retrial ordered.

PUBLIC PROSECUTOR v. TOH KEE HUAT

[A.Cr.J. (Ong J.) October 28, 1964]

[K.L. — Criminal Appeal No. 57 of 1964]

Evidence — Finger-print — Found on inside surface of glass pane of car.

Penal Code s. 379 — Theft of car — Evidence.

The respondent was acquitted at the close of the prosecution case on a charge under section 379 of the Penal Code for the theft of a motor-car on the inner surface of the glass pane of which were found his finger-prints. On appeal by the Public Prosecutor.

Held: the weight of evidence of finger-prints can never be decried. In this case a clear *prima facie* case had been made out which if unrebutted warranted conviction.

Case remitted back for the learned president to call on the defence.

MAGISTRATE'S CRIMINAL APPEAL.

Nik Saghir (Deputy Public Prosecutor) for the Public Prosecutor.

Respondent in person.

Ong J.: This is an appeal by the Public Prosecutor against the decision of the president Sessions Court, Kuala Lumpur, acquitting the respondent, at the close of the prosecution, on a charge of theft of a motor-car contrary to section 379 of the Penal Code.

The following facts had been established. A locked car, left parked at night outside an office on the Ipoh Road, was missing the next morning. On the following day it was found abandoned near the junction of Treacher Road and Bukit Bintang Road. The glass on the driver's door was wound down. Dusting of this pane of glass revealed finger prints on its inner surface. The